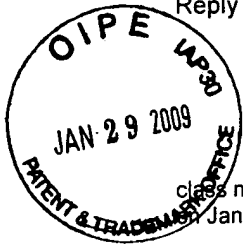


AF/IFW



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 January 18, 2009.

*Rosalie A. Centeno*  
Rosalie A. Centeno, Paralegal

In the Application of John Greeson et al

Ser.No.: 10/659,840

Filed: September 11, 2003 (CIP of 09/844,316)

For: Method and Mixture for Protecting Animals Against Pests

Art Unit: 1616

Examiner: Neil Levy

Customer No: 30996

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**REPLY BRIEF**

Dear Sir:

In response to the Examiner's Answer to appellant's Appeal Brief filed over 10 months earlier, the following comments are offered.

**CLAIM REJECTIONS – 35 USC § 112**

The Examiner continues to insist that appellants' specification fails to support "the non-systemic criticality" of the pesticides of its claims. However, appellants respectfully disagree with the Examiner's position and provided ample discussion and support with respect to this feature in Section (7)A.1) of appellants' Appeal Brief. For example, the statement is made on page 3, lines 20 and 21, of the specification that "unfortunately, Jeannin, as do several of the other earlier patents,

operate systemically" (emphasis added). This clearly shows that appellants recognize the adverse effects of compositions that operate systemically, in other words, that inherently enter the blood stream. Conversely, it is critical that appellants' composition be non-systemic. This is brought forth in appellants' stated object of the invention on page 4, namely that an effective barrier protection mixture be provided that remains on surface, i.e. is non-systemic. At the top of page 5 of appellants' specification, it is stated that their mixture "does not operate systemically".

It is furthermore respectfully submitted that one of skill in the art understands what is meant by, and the impact of, a non-systemic pesticide. By way of example only, and to show that such terminology is common knowledge to those of skill in the art, attached is a printout from the Environmental Protection Agency referring to the non-systemic nature of Permethrin (recited, for example, in appellants' claim 8).

The Examiner has again objected to appellants' language of "essentially no surfactant....." in claims 2 and 13. As stated in its amendment dated December 20, 2005 (and again referenced in its amendment dated April 30, 2007), the use of the term "essentially" means that there is at most a trace of surfactant, etc. present.

The Examiner has stated near the top of page 6 of his Answer that the claims as written also permit of systemic action. Appellants respectfully disagree. In particular, the mixture of claim 1 requires at least one pesticide, and claim 1 then states that said pesticide (i.e. said at least one pesticide) is adapted to act non-systemically. Similarly, claim 12 requires that the insecticide, etc. operates non-systemically. The Examiner's continued objection to the use of its "adapted to" language is not understood. As pointed out previously, MPEP section 2173.05 (g)

states in the first sentence that a “functional limitation is an attempt to define something by what it does, rather than what it is. The next statement goes on to state that there “is nothing inherently wrong with defining some part of an invention in functional terms”. The second paragraph of MPEP 2173.05 (g) states that a “functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art”. Thus, the Examiner's objection to appellants' “adapted to act non-systemically” language is not founded. Not only is “adapted to” language specifically sanctioned by MPEP 2173.05(g), the Court of Appeals for the Federal Circuit, in a 1990 case, has specifically stated that it is improper to disregard limitations that include “adapted to” language (see the Pac-Tec Inc. v. Amarace case (903 F 2d 796)).

### **Claim Rejections – 35 USC § 102**

With regard to Waldstein, in contrast to appellants' claim 1, and the pertinent dependent claims, Waldstein does not teach nor suggest a pesticide, and certainly not a pesticide that “is adapted to act non-systemically relative to a host animal”.

With regard to Mallis, the viscosity indicated for the only livestock application (column 3, line 32), namely 43.2 S.U.S, is far less than appellants' minimum requirement of 100 S.U.S.

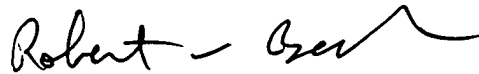
With regard to Coffee, this reference teaches an electrostatically sprayable insecticidal formulation. As stated in MPEP 2141.02 VI, prior art must be considered in its entirety, i.e., as a whole, including portions that lead away from the claimed invention. It is respectfully submitted that those with skill in the art recognize that an electrostatic application is not suitable for application to animals. Coffee itself

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Reply to Examiner's Answer dated 11/18/2009

recognizes this unsuitability, and states in claim 1 that the electrostatically sprayable formulation is suitable "to spray plants".

Appellants again respectfully request that the Board of Patent Appeals and Interferences overrule the final rejection of claims 1, 2, 4-14 and 16-21 and hold that these claims are allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Becker", with a stylized flourish at the end.

Robert W. Becker, Reg. 26,255  
Attorney for Applicant(s)

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Permethrin Reregistration Eligibility Decision; Notice of Availability

## Permethrin Reregistration Eligibility Decision; Notice of Availability

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[Notices]  
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ENVIRONMENTAL PROTECTION AGENCY  
[EPA-HQ-OPP-2004-0385; FRL-8074-5]

Permethrin Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).  
ACTION: Notice.

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SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide permethrin, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the permethrin Docket. Permethrin is part of the pyrethroid class of pesticides and was first registered in 1979. It is a broad spectrum, non-systemic, synthetic pyrethroid insecticide, and is registered for use on numerous food/feed crops, livestock and livestock housing, modes of transportation, structures, buildings, Public Health Mosquito abatement programs, numerous indoor and outdoor residential spaces, pets, and clothing. EPA has reviewed permethrin through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 26, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2004-0385, by one of the following methods:

? Federal eRulemaking Portal: <http://www.regulations.gov>. [\[Exit Disclaimer\]](#)  
Follow the on-line instructions for submitting comments.

? Mail: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

? Delivery: OPP Regulatory Public Docket (7502P),